

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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MAR 17 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
 Federal-State Joint Board on )  
 Universal Service )

CC Docket No. 96-45

**REQUEST FOR WAIVER**

AMSC Subsidiary Corporation ("AMSC"), hereby requests that the Commission waive its rules for the next three years to permit AMSC, as a provider of Mobile Satellite Service ("MSS"), to contribute to universal service at a level that is equivalent on a per-minute basis, for voice service, and a per-kilobyte basis, for two-way mobile data services, to the contributions of terrestrial-based wireless service providers. The Commission's current rules require all parties to contribute a percentage of their gross revenues. Because AMSC's satellite-based system is so much more costly than its terrestrial competitors and has correspondingly higher rates, the use of gross revenues to calculate its universal service contributions results in an unfair and disproportionate burden on AMSC's ability to compete. Grant of the requested waiver is consistent with Congress's mandate that the Commission assess universal service contributions in an equitable manner and with the Commission's own universal service principle of technological neutrality.

**Background**

AMSC is the entity authorized by the Commission in 1989 to construct, launch and operate the first dedicated U.S. MSS system.<sup>1/</sup> The first AMSC satellite was launched in 1995,

<sup>1/</sup> Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041 (1989); Final Decision on Remand, 7 FCC Rcd 266 (1992); *aff'd sub nom.* Aeronautical Radio, Inc. v. FCC, 983, F.2d 275 (D.C. Cir. 1993).

and AMSC began offering service in early 1996. Today, AMSC, a Commercial Mobile Radio Service ("CMRS") provider under the Commission's rules, offers a full range of land, maritime, and aeronautical mobile satellite services, including voice and data and a unique multi point dispatch service, throughout the contiguous United States, Alaska, Hawaii, the U.S. Virgin Islands, and coastal areas up to 200 miles offshore. The Commission has determined AMSC to be a non-dominant carrier and has characterized it as competitive with terrestrial CMRS providers.<sup>2/</sup>

AMSC's system has yielded significant public interest benefits.<sup>3/</sup> AMSC's system for the first time provides voice and data communications services to people who live, work, or travel in rural and remote areas of the U.S. unserved by terrestrial technologies. No matter how remote an individual's location, an AMSC terminal allows that person to communicate with any party who can be reached through the public switched telephone network. AMSC's system offers the ability to meet rural public safety needs and provide communications to any area during emergencies and natural disasters.<sup>4/</sup>

The development of AMSC's system has required an extraordinary investment and involved considerable technology and market risk. The construction and launch of the U.S. MSS

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<sup>2/</sup> Second Report and Order, 2 FCC Rcd 485, 489-90 (1987), clarified, 2 FCC Rcd 2417 (1987), *recon. denied*, 4 FCC Rcd 6029 (1989), *rev'd and remanded on other grounds sub nom.*, Aeronautical Radio, Inc. v. FCC, 928 F.2d 428 (D.C. Cir. 1991), Tentative Decision on Remand, 6 FCC Rcd 4900 (1991), Final Decision on Remand, 7 FCC Rcd 266 (1992), *aff'd sub nom.*, Aeronautical Radio, Inc. v. FCC, 983 F.2d 275 (D.C. Cir. 1993).

<sup>3/</sup> See, e.g., Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the Upper and Lower L-band, Notice of Proposed Rulemaking, 11 FCC Rcd 11675, 11680-81 (1996).

<sup>4/</sup> *Id.*

system have cost over \$600 million to provide a facility that has a maximum capacity equivalent less than that of a single metropolitan cellular system. While AMSC's experience since beginning operations has confirmed the value to the U.S. of having an MSS system, these high costs combined with the slower than anticipated development of the United States MSS market have resulted in a net loss of \$119.2 million in 1997 and a cumulative net loss of \$201.5 million in 1995 and 1996.

As a result of the extraordinary up-front costs associated with AMSC's system, AMSC charges between \$1.09 and \$1.49 per minute for mobile voice telephone service on its MSS system, with the precise rate depending on the customer's monthly voice access fee. This rate is substantially greater than the rates offered by other CMRS providers. In the Washington, DC area, for instance, the new PCS system offers rates as low as \$.30 per minute for peak periods and free minutes on weekends. The cellular systems offer rates as low as \$.25 peak. With new competition, the trend is towards lower rates.<sup>5/</sup> AMSC's rates for its two-way mobile data services are also significantly greater than rates offered by other mobile data providers. AMSC offers circuit-switched data services and a "store-and-forward" messaging service at a cost of approximately \$2.00 per kilobyte. In comparison, providers of Cellular Digital Packet Data Service, a digital two-way mobile data service that transmits packets over idle capacity on analog cellular networks, charge customers rates that average \$0.12-\$0.19 per kilobyte.<sup>6/</sup> Providers such as Ardis Company ("Ardis") and Ram Mobile Data, which transmit packetized data over private

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<sup>5/</sup> Elizabeth V. Mooney, *Prices Down 6 Percent as PCS and Cellular Fight for Customers*, RADIO COMM. REP., Dec. 1, 1997. The rates for comparable wireline services, of course, are even lower. Peak period long distance rates are as low as \$0.10 per minute and even lower.

<sup>6/</sup> Robin Gareiss, *Wireless Data*, Data Communications, 52 (March 21, 1995).

networks, charge on average roughly \$0.25-\$0.27 per kilobyte.<sup>7/</sup>

The contribution requirement at issue is one result of the Telecommunications Act of 1996 (the “Telecom Act”), which directed the Commission and the states to devise a new universal service system that ensures all Americans have access to affordable telecommunications services.<sup>8/</sup> In implementing this new universal service program, Congress directed the Commission to ensure that all providers of telecommunications services make an “equitable and nondiscriminatory contribution” to the universal service fund and that contributions are assessed in a competitively neutral manner. In addition, the Commission has established that its universal service rules should be applied in a technologically neutral fashion, meaning that the rules “neither unfairly favor nor disfavor one technology over another.”<sup>9/</sup> In its May 1997 *Universal Service Order*, the Commission decided to base interstate telecommunications carriers’ contributions to the universal service fund on a fixed percentage of their gross end-user telecommunications revenues.<sup>10/</sup>

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<sup>7/</sup> *Id.* On March 3, 1998, the Commission approved the transfer of control of all licenses held by Ardis from Motorola, Inc. to AMSC Acquisition Company, Inc., a wholly-owned subsidiary of American Mobile Satellite Corporation (“American Mobile”). AMSC is also a wholly-owned subsidiary of American Mobile. AMSC’s waiver request only applies to universal service contributions resulting from mobile data services provided through AMSC’s MSS system, and would not apply to data services provided through the Ardis network.

<sup>8/</sup> *See* 47 U.S.C. § 254.

<sup>9/</sup> Section 254(b)(7) of the Act provides that the Joint Board and the Commission can add to the six principles listed in that section as those upon which universal service policies shall be based. 47 U.S.C. § 254(b)(7).

<sup>10/</sup> Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, 9210 (1997) (“*Universal Service Order*”).

### Discussion

The Commission has the authority to waive any of its rules if “special circumstances warrant a deviation from the general rule” and “such deviation will serve the public interest.”<sup>11/</sup> For the reasons stated below, AMSC’s waiver request satisfies both of these elements.

AMSC’s satellite-based communications system has been a uniquely costly two-way wireless system to implement and charges correspondingly higher rates than ground-based CMRS systems. Under the current rules, without a waiver AMSC would be required to contribute to the universal service fund several times more per-minute of voice service and per-kilobyte of data service than the terrestrial systems with which it competes.<sup>12/</sup>

A waiver of the Commission’s universal service contribution rules with respect to AMSC would be in the public interest, since it maintains competitive neutrality between different technologies. The goals of competitive and technological neutrality are two of the fundamental principles of the Commission’s universal service policy, and, as shown above, the Commission’s universal service contribution rules disfavor AMSC’s MSS system. A waiver also would be consistent with the congressional mandate that all contributions to the universal service fund be

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<sup>11/</sup> *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972). *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio*).

<sup>12/</sup> This is unlike the facts presented to the Commission by MobileMedia in its waiver request. Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Order, CC Docket No. 96-45, CC Docket No. 97-21, DA 97-2061 (Chief, Accounting and Audits Division, Common Carrier Bureau) (Sept. 29, 1997). Here, AMSC has demonstrated that it is unique in its high costs and high rates, unlike MobileMedia, which sought to distinguish itself solely on the basis of the fact that it is losing money.

assessed in an “equitable” manner.<sup>13/</sup>

A waiver in this case also will enhance AMSC’s ability to provide service to the rural and remote areas that are intended to be one of the chief beneficiaries of the Commission’s universal service program. AMSC’s system provides two-way mobile voice and data communications to many of these areas that are unserved by terrestrial technologies.

A grant of AMSC’s waiver request should not result in a flood of similar waiver requests. Few if any carriers can present a similar combination of high-cost service focused on rural areas, unique technology, and a disproportionately burdensome universal service contribution.

Thus, for the purposes of this waiver, AMSC proposes that its universal service contribution for voice service be based on revenues of \$0.38 per minute through the end of 2000. This is a conservative estimate that AMSC derives from data in the *CMRS Second Annual Report*, which includes data on the average monthly bill per cellular subscriber in December 1996 and the average cellular subscriber's minutes of use per month.<sup>14/</sup> Combining the two sets of data yields an average revenue per minute for cellular providers of between \$0.32 and \$0.38. In all likelihood, the current actual rates for cellular, PCS, and other CMRS providers are lower than these averages, since they were based on older data limited to cellular service.<sup>15/</sup> With

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<sup>13/</sup> 47 U.S.C. § 254(b)(4).

<sup>14/</sup> Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, 12 FCC Rcd 11266, 11325 n. 256, 11337 tbl. 3 (1997) (“*Second Annual CMRS Competition Report*”).

<sup>15/</sup> There is ample precedent for the Commission’s use of an industry average to implement a regulatory scheme. In reviewing lowest unit rates in applying its political broadcasting rules, the Commission has “specifically endorsed the use of generally available industry or statistical data on average rates.” *Zell Miller, et. al*, Order, ¶ 8 (September 18, 1997).

Also, in the *Expanded Interconnection Tariff Investigation Order*, the Commission

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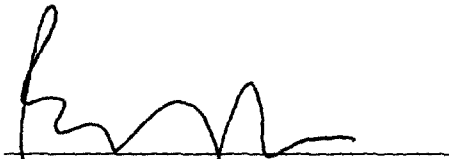
respect to two-way mobile data services from its MSS system, AMSC proposes that, through 2000, its universal service contribution be based on revenues of \$0.27 per kilobyte. This rate represents the high-end average charge for mobile data services offered by terrestrial data providers.<sup>16/</sup>

### Conclusion

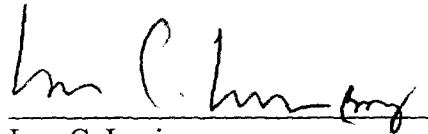
Based on the foregoing, AMSC respectfully requests that the Commission waive sections 54.703 and 54.709 of its rules in the manner and to the extent indicated.

Respectfully submitted,

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<sup>15/</sup>

(...continued)

assessed the LECs' physical collocation tariffs by using industry-wide averages. Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport, Second Report and Order, CC Docket No. 93-162, (June 13, 1997), ¶ 146.

<sup>16/</sup>

Grant of this waiver would have no effect on the Commission's universal service program. Even if this waiver reduced AMSC's universal service contribution by as much as eighty percent, this reduction would represent only .01 percent of the overall universal service contribution base, given the Commission's first quarter contribution factors.